THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.6747 OF 1996

DATED: 27-09-2007

Between :

Mohd. Amanullah and others. … Petitioners

AND

The Commissioner of Survey, Settlements &
Land Records, A.P. Hyderabad and others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.6747 OF 1996

ORDER:

This writ petition is filed seeking a Writ of Certiorari to call for the records relating to the order of the 1st respondent – Commissioner of Survey, Settlements and Land Records, dated 28-9-1995 and to quash the same being arbitrary and illegal.

The facts, in brief, are as under :

The petitioners herein claim to be the absolute owners and possessors of the land situated in RS.No.1045 of Vuyyur Village of Krishna District. It is stated that originally the said land, forming part of Vuyyur Estate was owned by their ancestor by name Bade Saheb. During his lifetime, Bade Saheb dug a tank with his own funds in an extent of about 4 acres out of Ac.13-19 cents in his occupation for the purpose of providing a source of irrigation to the rest of his lands. The tank continued in exclusive enjoyment of the successors of Bade Saheb for the past more than 150 years who in course of time, constructed dwelling houses on the tankbed and residing therein.

It is not in dispute that Vuyyur Estate was taken over by the Government under the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1948 (for short, 'the Estates Abolition Act') on 7-9-1950. Thereafter, it appears that the Settlement Officer held survey and classified the land in question as Bade Saheb Tank and Village Site Poramboke. Since there was no notice, the petitioners were not aware of the same till penal assessment was levied in the year 1961 under the provisions

of the A.P. Land Encroachment Act, 1905 alleging that they were in unauthorized occupation.

Challenging the said proceedings, the petitioners filed O.S.No.82 of 1961 on the file of the Court of the District Munsif, Gudivada seeking a declaration that the levy of penal assessment was illegal and without jurisdiction. The said suit was decreed by Judgment dated 5-8-1961. However the appeal by the Government being AS.No.106 of 1963 on the file of the Court of the Sub-Judge, Gudivada, was allowed and the decree was set aside holding that the entire estate vested in the Government under Section 3 of the Estates Abolition Act 26 of 1948. Though the second appeal, (S.A.No.657 of 1965) preferred by the petitioners was dismissed by this Court by judgment dated 11-7-1968, the petitioners were granted time to file an application under Section 11 (a) of the Estates Abolition Act to approach the Settlement Officer for grant of ryotwari patta with a further direction to the respondents not to evict the petitioners under the Land Encroachment Act till a final decision was taken by the settlement authorities.

Pursuant to the same, the petitioners made an application before the Settlement Officer, Eluru claiming ryotwari patta under Section 11(a) of the Estates Abolition Act. However, the petitioners claim was rejected by order dated 28-2-1977 on the ground that the schedule land, including the portion covered by the tank, which was classified in the Revenue Accounts as village site, did not come within the meaning of ryoti land since houses were built-up in the area. Aggrieved by the said order, the petitioners filed a Revision Petition before the 2nd respondent – Director of Settlements which was dismissed as time-barred by order dated 1-3-1978. The petitioners thereafter filed a petition to reopen the case and review the matter by condoning the delay. The said petition was also rejected on 24-4-1979 on the ground that the Director of Settlements has no power of Review. Challenging the same, the petitioners filed a further Revision

before the 1st respondent – Commissioner of Settlements, which was allowed by order dated 30-7-1981 thereby remanding the matter to the Director of Settlements for consideration on merits.

On such remand, the Director of Settlements, by order, dated 20-2-1986 dismissed the Revision Petition confirming the finding of the Settlement Officer that the land in question was non-ryoti and also holding that all the documents filed by the petitioners related to post-abolition period. Challenging the said order, the petitioners preferred a further Revision to the 1st respondent – Commissioner of Settlements, Survey and Land Records, which was also dismissed by order dated 28-9-1995. Hence, this writ petition.

I have heard the learned Counsel for the petitioners and perused the counter-affidavit filed on behalf of the respondents as well as the other material on record.

The learned Counsel for the petitioners contended that in the light of Exs.P-1 to P-13 documents marked on behalf of the petitioners which established the ownership and possession of the petitioners for more than 150 years and the tank located in the land was dug by the ancestors of the petitioners, the observation of the respondents that there was no document to prove title and occupation of the petitioners prior to 1-7-1945 was erroneous and unsustainable.

It is also contended that since the digging of a tank in a part of the land is an improvement to the other lands held by late Bade Saheb and particularly since the said tank continued in exclusive possession and enjoyment of the family of the petitioners and no other person ever drew water for irrigation purposes, the finding that the said land was a communal land was unwarranted and contrary to law.

A perusal of the order passed by the 3rd respondent dated 28-2-1979 shows that on behalf of the petitioners, four witnesses were examined and as many as 13 documents were produced to

substantiate their claim for grant of ryotwari patta under Section 11(a) of the Estates Abolition Act. As could be seen, Exs.P-3 to P-8 and Ex.P-10 reflected that the ancestors of the petitioners were inducted into possession much prior to the notification dated 7-9-1950. However, the 3rd respondent while relying upon the evidence of CW.1 – Village Karanam of Vuyyur, who deposed that the petition schedule land was not cultivable and that it was classified as tank poramboke in the adangal and was encroached upon several encroachers, including the petitioners, held that the schedule land did not come within the meaning of ryoti land. Curiously, the 2nd respondent - Director of Settlements – by order dated 20-2-1986 dismissed the Revision on a new ground that no documents were produced by the petitioners to show that they were inducted into possession prior to 1-7-1945.

The 1st respondent while confirming the said order, further held that since the extract of the Settlement Register disclosed that the schedule land was described as house sites, the schedule land was non-ryoti in nature.

The learned Counsel for the petitioners does not dispute the fact that certain houses have been constructed on the tankbed over a period of time for residential purposes of the families of the petitioners. However, it is contended that the initial character of the land has not been changed by such constructions and the land continued to be ryoti.

The learned Counsel further contended that digging of a tank as well as construction of houses is only an “improvement” within the meaning of Section 3(4) of the Estates Land Act, 1908 which is permissible under Section 13 of the said Act.

In support of his submissions, the learned Counsel has relied upon a Judgment of the Division Bench of High Court of Madras in MUKKARA RUDRAPPA CHETTI vs. THE KARVETNAGAR TRUST ESTATE, TIRUTTANI, BY ITS EXECUTIVE OFFICER G.

DORAISWAMI NAIDU[1].

Section 3 (4) of the Estates Land Act, 1908 may be extracted hereunder :

> *Improvement – Improvement means with reference to a ryot's holding any work which materially add to the value of the holding, which is suitable to the holding and consistent with the character thereof, and which, if not executed on the holding, is either executed directly for its benefit or after execution is made directly beneficial to it, and, subject to foregoing provisions, includes-*
> *(a) the construction of tanks, wells, water channels and other works for the storage, supply, or distribution of water for agricultural purposes;*
> *(b) the construction of works for drainage of land, or for the protection of land from floods, or from erosion or from other damage by water;*
> *(c) the reclaiming, clearing, enclosing, leveling, or terracing of land and the preparation of land for irrigation;*
> *(d) the erection of buildings on the holding or in its immediate vicinity elsewhere than on the village site, required for the convenient or profitable use or occupation of the holding; and the erection of dwelling houses for the ryot and his family and servants;*
> *(e) the renewal or reconstruction of any of the foregoing works, or alterations, therein or additions thereto; and*
> *(f) the planting of fruit trees and fruit gardens; but does not include, unless made with the written consent of the landholder, any work which prejudicially affects any other land of the landholder.*

While interpreting the scope of the above provision, the Division Bench of Madras High Court held that the word 'improvement' with reference to a ryoti-holding means any work which materially adds to the value of the holding, which is suitable to the holding and consistent with its character and which, if not executed on the holding, is either executed directly for its benefit or after execution is made directly beneficial to it. In the said case, the appellant therein dug two wells for the purpose of irrigating his holding. Having taken note of

the fact that it was manifest from the evidence that the appellant had utilized the water from the said wells for the purpose of irrigating his holding, the Division Bench held that the wells constituted an improvement within the meaning of Section 13 (3) of the Estates Land Act, 1908. The said decision was relied upon by this Court in W.P.No.73 of 1961 dated 10-4-1963.

In the case on hand, even assuming that the tank in question is included in the A-Register maintained by the Government, it is not the case of the respondents that there is any ayacut under the tank. There is absolutely no material to show that the tank is being used for communal purpose much less it is the case of the respondents that the Government is maintaining the tank.

The law is well-settled that the character and nature of the lands has to be determined on the basis of the actual use to which they were put on the date of application under Section 11(a) of the Act. Hence, the mere fact that some houses have been built subsequently on the tankbed during the course of time cannot change its character from ryoti to non-ryoti.

As expressed above, the documents produced before the Settlement Officer, particularly Ex.P-3 to P-8 and P-10 which established cultivation of the land from 1909 upto 1931 manifestly show that the ancestors of the petitioners were in possession and the land was ryoti land.

It is also relevant to note that the Zamindar of Vuyyur filed a suit in the Court of the District Munisf, Gudivada for recovery of possession of a part of the land owned by Bade Saheb, including the tank. The said suit was subsequently transferred to the Court of the Additional District Munsif, Machilipatnam and renumbered as OS.No.340 of 1909. Ultimately the said suit was dismissed by judgment dated 10-1-1911, in which a finding was recorded that the tank appears to be an ancient tank dug at the instance of the defendants and that the defendants repaired the tank once, 20 years ago. The said judgment

has become final.

The certified copies of the decree in O.S.No.340 of 1909 and another decree in O.S.No.63 of 1911 marked as Exs.P-5 & P-6 reflected the possession of the petitioners' ancestors including the tank, much prior to 1-7-1945. Both the respondents 1 and 2 committed an error in disregarding the said documents. As a matter of fact, the Settlement Register of 1353 Fasli which was relied upon by the Commissioner was a post-abolition record.

It is not in dispute that under Section 11(a) of the Estates Abolition Act every ryot in an estate shall be entitled to a ryotwari patta in respect of the ryoti land which immediately before the notified date was properly included or ought to have been included in his holding.

In the case on hand, as noticed above, the evidence produced by the petitioners is sufficient to establish the possession of the ancestors of the petitioners before the notified date. The material also demonstrated that the said lands were ryoti lands at the time of abolition of the estate. Hence, the respondents 1 to 3 committed an error in disallowing the claim of the petitioners for grant of a ryotwari patta. The finding recorded by the 3rd respondent that it was not a ryoti land as well as the finding recorded by the respondents 2 and 3 that all the documents produced by the petitioners relate to post-abolition period being factually incorrect cannot be accepted.

Accordingly, the order of the 3rd respondent as confirmed by the respondents 1 and 2 is hereby set aside and the Writ Petition is disposed of declaring that the petitioners are entitled to a ryotwari patta under Section 11(a) of the Estates Abolition Act. No costs.

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G. ROHINI, J.

Dt. 27–09-2007

gbs

[1] 1947 (1) Madras Law Journal 248